

CITY OF BURIEN, WASHINGTON

ORDINANCE NO. 512

AN ORDINANCE OF THE CITY OF BURIEN, WASHINGTON, RELATING TO RIGHT OF WAY PERMITS; AMENDING CHAPTER 12.15 BMC TO CONFORM TO NEW CHAPTER 12.15 BMC (SPECIAL EVENTS PERMITS) AND CHAPTER 12.38 BMC (STREET TREES AND TREES ON CITY PROPERTY); AND PROVIDING FOR AN EFFECTIVE DATE; AND PROVIDING FOR SEVERABILITY

WHEREAS, the City Council has adopted a new Chapter 12.15 of the Burien Municipal Code that implements new requirements for the issuance of special events permits that will supercede certain parts of the right of way use permit requirements; and

WHEREAS, the City Council has previously adopted Chapter 12.38 of the Burien Municipal Code addressing use of the right of way for the maintenance, removal, pruning or windowing of trees and/or vegetation in the right of way; and

WHEREAS, it is necessary to amend Chapter 12.18 of the Burien Municipal Code to conform to the foregoing changes to the Burien Municipal Code;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BURIEN, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. Amending Section 12.18.010 BMC (Permit Requirements). Section 12.18.010 of the Burien Municipal Code is hereby amended (as shown with legislative revisions marks) to read as follows:

12.18.010 Permit requirements.

(1) Except as otherwise provided at Section 12.18.030 BMC for special events and Chapter 12.38 BMC for maintenance, removal, pruning or windowing of trees and/or vegetation in the right of way, It is unlawful for anyone to make private use of any public right-of-way without first having obtained a right-of-way use permit issued by the city or to use any right-of-way without complying with all the provisions of such right-of-way use permit issued by the city.

(2) Pursuant to BMC 12.18.030(6), any telecommunications carrier or provider who desires to construct, install, operate, maintain, or otherwise locate telecommunications facilities in, under, over or across any right-of-way of the city for the purpose of providing telecommunications services shall first obtain authorization in the form of a franchise authorizing the use of such right-of-way consistent with the requirements and conditions of such franchise.

(3) All permit applicants shall, before commencing any construction in city rights-of-way, comply with all requirements of Chapter 19.122 RCW, the one number locator service.

(4) Use of the right-of-way of the City for special events shall be governed by Chapter 12.15 BMC; provided that, all special events that may alter the appearance of or disturb the surface or subsurface of the right-of-way shall be subject to the requirements for a type C permit in addition to the requirements for a special events permits.

(5) A permit shall not be required under this Chapter 12.18 BMC for the maintenance, removal, pruning or windowing of trees and/or vegetation in the right of way of the City that is subject to the requirements of Chapter 12.38 BMC; provided that, maintenance, removal, pruning or windowing of trees and/or vegetation in the right of way of the City that is part of other work or activities to be performed in the right-of-way of the City shall be subject to the this Chapter 12.18 BMC.

Section 2. Amending Section 12.18.030 BMC (Right-of-way use permits). Section 12.18.030 of the Burien Municipal Code is hereby amended (as shown with legislative revisions marks) to read as follows:

(1)Type A – Short-Term Nonprofit.

(a)Type A permits are issued for use of a right-of-way for 72 or less continuous hours for nonprofit purposes that are not classified as special events pursuant to Chapter 12.15 BMC, and which do not involve any alteration to the appearance of or a physical disturbance to the surface or subsurface of the right-of-way or any improvements located in, over, under and upon the right of way.

(b)This type of use may involve disruption of pedestrian and vehicular traffic or access to private property, and may require inspections, cleanup and police surveillance. For periods longer than 72 hours, these uses may be required to obtain a Type D annual right-of-way permit. If any of these uses are for profit, and are not classified as special events pursuant to Chapter 12.15 BMC, a Type B permit will be required.

(c) ~~Type A permits include but are not limited to the following, when for nonprofit purposes:~~

~~(i)Assemblies;~~

~~(ii)Bike races;~~

~~(iii)Block parties;~~

~~(iv)Parades/processions;~~

~~(v)Fairs, shows and exhibitions;~~

~~(vi)Parking;~~

~~(vii)Nonmotorized vehicle races;~~

~~(viii)Street dances;~~

~~(ix)Street runs or walks.~~

(2)Type B – Short-Term Profit.

(a)Type B permits are issued for uses of right-of-way for 72 or less continuous hours for profit purposes, which do not involve the physical disturbance of the right-of-way and are not classified as special events pursuant to Chapter 12.15 BMC.

(b)This type of use may involve disruption to pedestrian and vehicular traffic or access to private property, and may require inspections, cleanup and police surveillance. For periods longer than 72 consecutive hours, a Type D annual right-of-way permit may be required.

(c)Type B permits include, but are not limited to, the following when they are for profit purposes:

~~(i)Fairs, carnivals, shows and exhibitions;~~

~~(ii)House or large structure moves other than those which require a Type E permit;~~

(iii)Temporary sale of goods;

(iv)Temporary street closures.

(3)Type C – Disturbance of City Right-of-Way.

(a)Type C permits are issued for use of a right-of-way, for a period not in excess of 180 continuous days, for activities that may alter the appearance of or disturb the surface or subsurface of the right-of-way but do not necessarily involve the installation of permanent structures.

(b)Type C permits include but are not limited to:

(i)Boring;

(ii)Culverts;

(iii)Curb cuts;

(iv)Paving;

(v)Drainage facilities;

(vi)Driveways;

(vii)Fences;

(viii)Landscaping;

(ix)Painting/stripping;

(x)Sidewalks;

(xi)Street trenching;

(xii)Utility installation, repair, replacement.

(c)Permanent structures not included in the above list that are placed in the right-of-way for a period over 72 hours may require a Type D annual right-of-way use permit, below. The director shall have the discretion to determine whether a Type C or D permit, or a facilities lease shall be required for any particular use or uses.

(4)Type D – Annual Right-of-Way Permit.

(a)Type D annual right-of-way permits are issued for uses in excess of 72 hours that will not physically disturb the right-of-way and are associated with long-term use of the right-of-way.

(b)The use of the right-of way for structures, facilities, and uses that involve capital expenditures and long-term commitments require this type of permit; provided, however, that more intensive long-term uses of the right-of-way such as the location of facilities and permanent structures on the right-of-way will require a facilities lease (Type F permit).

(c)Type D permits include, but are not limited to:

(i)Air rights and aerial facilities;

(ii)Bus shelters and stops;

(iii)Access to construction sites and haul roads;

(iv)Loading zones;

(v)Newspaper sale, distribution, and storage facilities;

(vi)Recycling facilities;

(vii)Sales structures;

(viii)Sidewalk cafes;

(ix)Special and unique structures, such as awnings, benches, clocks, decorations, flagpoles, fountains, kiosks, marquees, private banners, public mailboxes, and street furniture;

(x)Underground rights;

(xi)Utility facilities;

(xii)Waste facilities.

(d)The director shall have the discretion to determine whether a Type C or D permit or a facilities lease shall be required for any particular use or uses.

(5)Type E – Hauling Loaded Vehicles.

(a)Type E permits are issued for uses of right-of-way, for a period not in excess of 180 continuous days, for those activities that have the potential of altering the appearance of, or disturbing the surface or subsurface of, the right-of-way due to hauling large quantities.

(b)Type E permits include, but are not limited to:

(i)Frequent use hauling involving an average of six loaded vehicles per hour during any eight-hour period in one day, for two or more consecutive days.

(ii)Any hazardous waste hauling.

(c)Type E permits may be issued to a general contractor to authorize construction and fill activities by the said general contractor and by subcontractors.

(6)Type F Permits – Facilities Lease or Franchise. A Type F permit (facilities lease or franchise) is issued for use of a right-of-way for a period in excess of 180 continuous days, for those activities that have the potential of altering the appearance of or disturbing the surface or subsurface of the right-of-way or for the location of permanent structures on the right-of-way. Uses requiring a facilities lease or franchise shall include, but are not necessarily limited to the following:

- (a) Location of garages, buildings, or other structures within the right-of-way;
- (b) Location of telecommunications facilities within the right-of-way;
- (c) Location of utility infrastructure within the right-of-way.

The director shall have the discretion to determine whether a franchise will be required rather than a facilities lease. The city council reserves the sole discretion to lease city property and other facilities, and no vested or other right shall be created by this section or any provision of this chapter applicable to such facilities leases. The terms of such facilities leases and franchises, including the fees associated with such lease or franchise, shall be negotiated with the lessee or franchisee on a case-by-case basis.

Section 3. Severability. Should any section, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances.

Section 4. Effective Date. This ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force one hundred and twenty (120) days after the date of adoption.

ADOPTED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON THE 11TH DAY OF MAY, 2009, AND SIGNED IN AUTHENTICATION OF ITS PASSAGE THIS 11TH DAY OF MAY, 2009.

CITY OF BURIEN
/s/ Joan McGilton, Mayor

ATTEST/AUTHENTICATED:
/s/ Monica Lusk, City Clerk

Approved as to form:
/s/ Christopher Bacha
Kenyon Disend, PLLC
Interim City Attorney

Filed with the City Clerk: April 30, 2009
Passed by the City Council: May 11, 2009
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